

STATE OF MICHIGAN  
COURT OF APPEALS

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DAVID C. SHARPE and DONNA L. SHARPE,

Plaintiffs-Appellants,

v

FRANCES ELIZABETH TABER, Individually  
and as Trustee of the FRANCES ELIZABETH  
TABER REAL ESTATE TRUST,

Defendant,

and

DIEHL REALTY INC./BETTER HOMES &  
GARDENS, PAMELA UETRECHT, and  
CHARLOTTE A. SHEMEL, jointly and severally,

Defendant-Appellees.

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Before: Murray, P.J., and Murphy and Markey, JJ.

PER CURIAM.

In this action alleging fraud, innocent and negligent misrepresentation, breach of contract, and violations of the Michigan Consumer Protection Act<sup>1</sup> (MCPA) arising out of the sale of real property, plaintiffs appeal as of right from the trial court's order granting summary disposition to defendants pursuant to MCR 2.116(C)(7), (8), and (10). We affirm.

In October of 1999, plaintiffs were shown a lakefront home by defendant Shemel, a salesperson with defendant Diehl Realty. Shemel was working as an agent of the seller of the property only. Shemel informed plaintiffs that the owner, defendant Taber, lived out of state and did not occupy the property, but that a broker in her office, defendant Uetrecht, took care of the property. Additionally, Shemel provided plaintiffs with a seller's disclosure document which

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<sup>1</sup> MCL 445.901 *et seq.*

indicated that water had entered the house through a door on one occasion due to a plugged drain. Plaintiffs also alleged that comparable verbal representations were made by defendants.

Plaintiffs decided to purchase the property and at the closing signed documents that contained the following release language:

Buyers hereby state that they have examined the property and that they have offered to purchase the property based upon their examination of said property. Buyers understand and agree that in purchasing this real estate that it is possible that there may be defects that cannot be observed by normal inspection. *Buyers further understand that the Real Estate Broker and/or their agents are making no representation as to any possible condition of said property and hereby release the Real Estate Broker and their agents from any claim whatsoever with regard to the condition of the herein described premises.* [Emphasis added.]

In the spring of 2000, after plaintiffs occupied the property for some months, a heavy rain and wind storm occurred around the property. Plaintiffs testified at deposition that the rainwater seeped into the home very fast and came from behind the kitchen cabinets. Plaintiffs incurred water damage to much of the kitchen and other parts of the house. Plaintiffs state that in repairing the damage, previous water damage and the growth of black mold was discovered.

Plaintiffs filed suit, alleging five counts in their complaint, including misrepresentation, negligent misrepresentation, breach of contract, innocent misrepresentation, and violations of the MCPA. Plaintiffs alleged, inter alia, that defendants made misrepresentations as to the method of entry of water into the home, the frequency of entry of water, and as to how the water problem was remedied.

Defendants Diehl Realty, Uetrecht, and Shemel moved for summary disposition under MCR 2.116(C)(7), (8), and (10). The trial court ruled that the release precluded all of plaintiffs' claims with regards to defendants Diehl Realty, Shemel, and Uetrecht.<sup>2</sup>

Plaintiffs argue on appeal that the trial court erred when it found that the document signed at closing, which purported to release the real estate broker and agents of liability regarding the condition of the property, precluded all of plaintiffs' claims. We disagree.

Orders granting or denying motions for summary disposition are reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Likewise, issues of contract interpretation are questions of law that are reviewed by this Court de novo. *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002).

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<sup>2</sup> Plaintiffs are not challenging a separate order granting summary disposition in favor of Taber and the Taber Trust.

The validity of a release turns on the intent of the parties. *Batshon v Mar-Que Gen Contractors, Inc.*, 463 Mich 646, 649 n 4; 624 NW2d 903 (2001). If the language of a release is clear and unambiguous, the intent of the parties is ascertained from the plain and ordinary meaning of the language. *Id.* “A release is valid if it is fairly and knowingly made,” while a release is “invalid if (1) the releasor was acting under duress, (2) there was misrepresentation as to the nature of the release agreement, or (3) there was fraudulent or overreaching conduct to secure the release.” *Brooks v Holmes*, 163 Mich App 143, 145; 413 NW2d 688 (1987)(citations omitted). “To warrant rescission or invalidation of a contract or release, a misrepresentation must be made with the intent to mislead or deceive.” *Hungerman v McCord Gasket Corp*, 189 Mich App 675, 677; 473 NW2d 720 (1991)(citation omitted).

It is apparent to us that the language of the release clearly and unambiguously evidences an intent that plaintiffs release the real estate broker and agents from any claim whatsoever, which by necessity includes all counts in the complaint. Plaintiffs argue, however, that the release is invalid because plaintiffs relied on defendants’ alleged fraudulent statements and disclosures in closing the transaction on the property, which included execution of the release agreement. Plaintiffs maintain:

[A]s indicated about the duty aspect of this case, the failure of the defendants to disclose facts in response to direct inquiries by the plaintiffs give rise to the threshold misrepresentation which would raise the factual issue as to the validity of what the defendants would have us believe is a release.

The deposition testimony of Mr. Sharpe provided documentary evidence with respect to the alleged misrepresentations and reliance thereon.

We opine that the specific language contained in the release nullifies any assertion that fraudulent representations and conduct invalidate the release secured by defendants. In *Dresden v Detroit Macomb Hosp Corp*, 218 Mich App 292, 294-295; 553 NW2d 387 (1996), this Court addressed a claim by the plaintiff that a release was invalid, in the context of a medical malpractice settlement, where there was fraudulent conduct, and where the plaintiff sought to reopen a prior malpractice claim. The *Dresden* panel held, in part:

We further find summary disposition of the fraud claim was proper because plaintiff specifically acknowledged and agreed in the release that no representation or inducement except for the consideration paid had been made by the defendants to settle the case. This statement in the release forecloses plaintiff from claiming that he was relying on misrepresentations of defendants regarding the missing x-ray when he settled the lawsuit. [*Id.* at 298.]

*Dresden* is analogous to the case before us today, in that plaintiffs specifically acknowledged in the release that defendants were “making no representation as to any possible condition” of the property. Plaintiffs are thus foreclosed from arguing that they executed the release in reliance on representations made by defendants with respect to the condition of the

property. Our conclusion is further supported by *Brooks, supra*, where comparable facts and arguments were addressed and the validity of a challenged release upheld.<sup>3</sup>

Plaintiffs further argue, however, that for a release to be valid, it must be supported by sufficient consideration, and conclude, without analysis or support, that no consideration was present here.

“Where there is no specific recitation of separate consideration for the release, but it is part of a larger contract involving multiple promises, the basic rule of contract law is that whatever consideration is paid for all the promises is consideration for each one[.]” *Rowady v K Mart Corp*, 170 Mich App 54, 59; 428 NW2d 22 (1988). Here, the release was not standing alone but was part of the closing documents and sales transaction between buyer and seller. Accordingly, the other promises the sellers made operated as consideration for plaintiffs’ promise to release the real estate broker and agent from liability.

In light of the nature of our resolution of this case, we need not address plaintiffs’ other appellate issues.

Affirmed.

/s/ Christopher M. Murray

/s/ William B. Murphy

/s/ Jane E. Markey

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<sup>3</sup> Our analysis applies equally to plaintiffs’ claim concerning the cabinets.